March 6, 2009

The Honorable Isaac V. Figir
Speaker
15th FSM Congress
Palikir, Pohnpei, FM 96941

Dear Speaker Figir:

I am transmitting to you Congressional Act No. 15-78, which have become Public Law No.15-73 without my signature, entitled:

"AN ACT TO FURTHER AMEND TITLE 53 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 1-120, 7-118, 9-056, 12-76, 14-34, 14-37 AND 14-86, BY AMENDING THE FOLLOWING PROVISIONS OF TITLE 53, SECTIONS 603, 605, 607, 801, 803, 803A, 804, 806, 809, 901, 902, AND 1006, TO PROVIDE FOR GREATER FINANCIAL STABILITY FOR THE FSM SOCIAL SECURITY ADMINISTRATION AND TO REDUCE ITS UN-FUNDED LIABILITY, BY RAISING TAX RATES, TO CLARIFY DEFINITIONS, TO CHANGE RESTRICTIONS TO THE TYPES OF INVESTMENT THAT SOCIAL SECURITY MAY ENGAGE IN, AND FOR OTHER PURPOSES."

I have painstakingly reviewed the Act. While I am in full agreement with the definite need to strengthen and revitalize the FSM Social Security System, I respectfully disagree with the means and the manner chosen to accomplish those goals. In other words, the means and manners chosen, as set forth in the Act, defeat the very purpose for which the Social Security System was established and they erode the justifications for the said Social Security System’s continued existence. Those purposes, in the nutshell, are to provide financial support to an employee upon reaching the age of 60, and to provide financial support to the spouse and his children upon his/her death.

I have wrestled with the Act, which now becomes law, by carefully studying it provision by provision, sentence by sentence, and phrase by phrase in an effort to understand the pros and the cons in support of or against it and I came to the conclusion that I shall wash my hands of it by letting it become law without my signature with the hope that the Congress will see fit to amend it to harmonize those conflicting interests involve shall be carefully and thoroughly analyzed. Such careful analysis is imperative especially at this time of global and regional financial crises, which have tremendous adverse financial repercussions on the citizens and residents of this Nation. The implications inherent in the Act are far-reaching and everyone will be adversely affected thereby. I do not see the need to rush. Just by reading SCREP No. 15-166, so much relevant information is missing, and consultations not comprehensive. I do not believe that the information on the table will be sufficient to arrive at any informed decision.
Second, no alternative has been offered with which to compare the suggested course of action in the Act. There should be an attempt to explore workable options. There are workable options, including a bailout, as will be discussed below, as opposed to depriving the employees of their vested rights to receive their retirement benefits upon turning 60 years old, or depriving and/or frustrating the enjoyment of those vested rights to those retirement benefits by the spouses or children of an insured employee upon his death.

Third, rather than adding tax burden on common people and cutting down and suspending parts of their benefits, the government should consider infusing fresh capital to revitalize the ailing program. For example, there should be an initial appropriation of $2 millions dollars to revitalize the Social Security Program to be followed by an authorization for an annual appropriation of the sum of $1.5 millions per annum consecutively for the next four years following the initial appropriation. This is a doable and clean alternative as opposed to the means and manner of raising money to revitalize the System provided in the Act. This alternative is based on past experience that this Nation often had $5 millions surplus in the past years. Such surplus should be used to bailout the Social Security Program and must be considered by this Government as a top priority.

At this time of global financial crisis, superpowers like the United States, have tried to put together a stimulus package of up to $2 trillion to stimulate the U.S. economy. The FSM government must learn from the industrialized Nations and step forward to help the economy and the people. It seems to me that the congressional Act proposes just the exact opposite. The people are made to carry additional burden of increased tax and diminished benefits. Given that the cost of living has increased beyond 10% over the years while the salaries for most employees are far behind inflation, an alternative solution has to be maintained or even increase, rather than decrease, the benefits to the Social Security Administration retirees and their beneficiaries.

The mandatory retirement age in the National Government is 60. The same applies to State governments as well. When a government employee retires, he or she will never retain the same level of income to support dependents and family. Now jobless, a retiree relies upon social security benefits. But the social security benefits are proposed to be cut by 50% until the retiree reaches the age of 65. The retired employee, in all likelihood, will find it difficult to get a job from the private sector, while waiting for age 65, because our private sector is not growing. Again, when the foreign governments are scrambling for stimulus package, FSM has decided to raise taxes and cut benefits. With declining purchasing power of currency and with reduced income and benefit, the economy will be hardly reinvigorated. This is not the right time to increase tax when the economy is in bad shape. What we need is a meaningful economic stimulus and, for this program, government infusion of funds.
My suggestion is for us to work out a further amendment of the Act before it becomes law. According to the committee report, with a tax increase of 7% at wage base of $6,000, revenue collection will increase by $1.8 million. We need to seriously consider infusing money to FSMSSA, either in lump sum or on a staggered basis, in the amount equivalent to the additional revenue that is projected to result from the tax increase. Note that there are huge collectibles that remained on the books of FSMSSA. In my mind, instead of creating more collectibles, it is more realistic to trim down existing collectibles. On the other hand, the postponement of 50% benefit to age 65 is too drastic given the current condition of the economy and the financial handicap of newly retired employees. I grudgingly propose that we consider graduated reduction of benefits on a yearly basis until the retiree reaches the age of 65. I must admit that every instinct in my body even abhors this proposal because it has the propensity to forfeit vested rights of the retirees and their beneficiaries. In other words, this proposal will violate the retiree’s vested rights to receive his full retirement benefits at the age of 60 as set forth in the law at the time he was compelled by law to automatically enroll in the System in consideration of receiving those benefits upon retirement. The same is true of the retiree’s spouse and children.

Another aspect I am having difficulty with is the status of officers and shareholders of corporation that are made liable for unpaid taxes. As we all know, the liability of a corporation is not the liability of any officer or shareholder, unless the corporation is an alter ego of the officers and the stockholders, and that it were not a separate legal entity. To that extent, the law suffers from invalidity.

There are many other aspects of the Act that I find to be very problematic because of incomplete information. For example, the primary justification for the increased tax and cut in benefits is to reduce the un-funded liability of FSMSSA. However, from the committee report, it is not clear how FSMSSA has performed in collecting taxes. Thus, even if theoretical projected revenue is increased, but the collection performance is deficient, the un-funded liability remains, or becomes worse. Careful analysis is needed to determine the most effective solution.

On hindsight, because of the dire financial situation of the Nation, it is not unlikely for State governments to demand for a bailout from the National Government instead of paying for the tax increase. And there is precedent for a bailout. When that happens, the issue may come back to haunt the National Government. For this reason, I reiterate that a better and more appropriate approach will be to seriously consider a capital infusion.
The Honorable Isaac V. Figir  
March 6, 2009  
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The Congress should also take into account the oppositions and concerns raised by the Governors about the wisdom of approving the law. The Governors represents the constituents and constituents’ fears have been effectively articulated by and through official channels, their respective Governors. Those “cry in the wilderness” should not be completely ignored but must been seriously considered in any deliberation on the law.

In view of the foregoing discussion, and in view of other considerations not enumerated above, I wish to invite all the members of Congress to revisit this subject as soon as possible to harmonize those conflicting interests with a view to ensure continued vitality of the Social Security System, on the one hand, and to reinstate the vested rights of the insured employees and their beneficiaries, which have summarily been castrated and removed by the law. I encourage a joint undertaking between our branches of government in order to come up with most effective and equitable solution to these conflicting interests.

Finally, I appreciate for your understanding and full cooperation on this very important matter.

Sincerely,

Manny Mori  
President

xc:  Chief Justice, FSM Supreme Court  
Secretary, Department of Finance  
Director, Office of SBOC  
Library, CFSM  
Legislative Counsel, CFSM  
PIO, FSM
February 10, 2009

His Excellency Manny Mori
President
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 15-78, "AN ACT TO FURTHER AMEND TITLE 53 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 5-120, 7-118, 9-056, 12-76, 14-34, 14-37 AND 14-86, BY AMENDING THE FOLLOWING PROVISIONS OF TITLE 53, SECTIONS 603, 605, 607, 801, 803, 803A, 804, 806, 809, 901, 902, AND 1006, TO PROVIDE FOR GREATER FINANCIAL STABILITY FOR THE FSM SOCIAL SECURITY ADMINISTRATION AND TO REDUCE ITS UNFUNDED LIABILITY, BY RAISING TAX RATES, TO CLARIFY DEFINITIONS, TO CHANGE RESTRICTIONS TO THE TYPES OF INVESTMENT THAT SOCIAL SECURITY MAY ENGAGE IN, AND FOR OTHER PURPOSES.", which was passed by the Fifteenth Congress of the Federated States of Micronesia, Sixth Regular Session, 2009, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

Liwiana K. Ramon
Chief Clerk, Congress of the
Federated States of Micronesia

Enclosures
An Act

TO FURTHER AMEND TITLE 53 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 5-120, 7-118, 9-056, 12-76, 14-34, 14-37 AND 14-86, BY AMENDING THE FOLLOWING PROVISIONS OF TITLE 53, SECTIONS 603, 605, 607, 801, 803, 803A, 804, 806, 809, 901, 902, AND 1006, TO PROVIDE FOR GREATER FINANCIAL STABILITY FOR THE FSM SOCIAL SECURITY ADMINISTRATION AND TO REDUCE ITS UN-FUNDED LIABILITY, BY RAISING TAX RATES, TO CLARIFY DEFINITIONS, TO CHANGE RESTRICTIONS TO THE TYPES OF INVESTMENT THAT SOCIAL SECURITY MAY ENGAGE IN, AND FOR OTHER PURPOSES.

INTRODUCED BY SENATOR: JOE N. SUKA (BY REQUEST)
DATE: SEPTEMBER 3, 2008

REFERRED TO: HEALTH, EDUCATION AND SOCIAL AFFAIRS COMMITTEE
FIRST READING: DECEMBER 4, 2008
SECOND READING: FEBRUARY 3, 2009
ACT NO. 15-78

(CONGRESSIONAL BILL NO. 15-52, C.D.1, C.D.2)

We hereby certify that on February 3 the foregoing act passed Second and Final Reading of the Fifteenth Congress of the Federated States of Micronesia, Sixth Regular Session, 2009, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Isaac V. Figir
Speaker
Congress of the Federated States of Micronesia

Liwiana K. Ramon
Chief Clerk
Congress of the Federated States of Micronesia
AN ACT

To further amend title 53 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-120, 7-118, 9-056, 12-76, 14-34, 14-37 and 14-86, by amending the following provisions of title 53, sections 603, 605, 607, 801, 803, 803A, 804, 806, 809, 901, 902, and 1006, to provide for greater financial stability for the FSM Social Security Administration and to reduce its un-funded liability, by raising tax rates, to clarify definitions, to change restrictions to the types of investment that Social Security may engage in, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Section 603 of title 53 of the Code of the
2 Federated States of Micronesia, as amended by Public Laws Nos. 5-
3 120, 7-118, 12-76, 14-37 and 14-86 is hereby further amended to
4 read as follows:

5 "Section 603 Definitions of title 53 of the Code of the
6 Federated States of Micronesia, as amended, is hereby
7 further amended to read as follows:

8 (1) 'Application' means the prescribed form or forms
9 provided to individuals by the Social Security
10 Administrator as the exclusive means by which an
11 individual may apply for the payment of any benefit
12 provided for in section 801, 802, 803 or 803A of this
13 act.

14 (2) 'Became disabled' means the first month in which
15 an individual is under a disability.
(3) 'Board' means the Federated States of Micronesia Social Security Board provided for by section 701 of this subtitle.

(4) 'Child or spouse' means an applicant that the court of the State in which an individual was domiciled at the time of his death has or would find to be the individual's child or spouse in determining the devolution of intestate personal property. 'Child' shall include only the deceased individual's biological children and such adopted children whose confirmed petition for adoption by the wage earner has been presented to the Social Security Administration and who were adopted by the wage earner on or prior to the wage earner's 55th birthday of the adopting parent, shall be a 'child' for the purposes of this title unless, the Social Security Administrator makes a determination that, due to exceptional circumstances, the person shall be so entitled. In reaching a determination that exceptional circumstances apply, the Social Security Administrator shall satisfy himself or herself that future eligibility for social security benefits was not a significant factor in the decision to adopt and may consider any available, relevant information including, but not limited to:

(a) whether the adopted child's biological
mother, and/or biological father were alive at the time
the adoption took place;

(b) if one or both biological parents were alive
at the time of adoption, whether one or both parents
were acting or were capable of acting as a primary
caregiver at that time;

(c) whether the adopting parent is a relative of
the adopted child;

(d) whether, at the time the adoption took
place, there were relatives, not including the adopting
parents, who would have been appropriate guardians for
the adopted child;

(e) whether the adopting parent was a primary
caregiver for the adopted child at the time of adoption
and continued in that role after the adoption took
place;

(f) any other factor the Social Security
Administrator considers relevant.

(5) 'Contributions' means the tax imposed upon income
of covered employees and the tax imposed upon employers
on account of wages paid to a covered employee.

(6) 'Disability' means inability to engage in any
substantial gainful employment by reason of any
medically determinable physical or mental impairment
which can be expected to result in death or which has
lasted or can be expected to last for a continuous period of not less than 12 months.

(7) 'Earning test' means that an individual who receives a retirement, disability, or survivor benefit and who works in covered or non-covered employment shall have his quarterly benefit reduced by one dollar for each two dollars earned in a quarter, except there shall be no reduction for the first $300 earned in a quarter. The reduction shall be applied in one of the subsequent two quarters immediately after the quarter in which the earnings were made, or as soon as possible thereafter. All benefit recipients have an affirmative duty to disclose to the FSM Social Security Administration all earnings from either covered or non-covered employment for which time they are receiving or claiming benefits. Under certain circumstances as defined in section 804, the earnings test may not apply to old age benefits received by an individual between the ages of 60 and 64 who turns 60, after January 1, 2010.

(8) 'Employee' means:

(a) any officer of a corporation; or

(b) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(c) any self-employed person who has at least one
employee for whom he is required to report in a given quarter; or

(d) any self-employed person who had more than $10,000 of annual gross revenue in the preceding calendar year.

(9) 'Employer means:

(a) For purposes of this act, employer means the person, business organization or other organization, or national or state or municipal government or agency, that pursuant to common law rules of employment is the actual person or organization responsible for the formation and continuation of the working relationship with employee.

(b) The Social Security Administration has the right to determine the actual employer of employees for purposes of implementing this act, and need not rely on the characterization provided.

(c) Employer may be an individual, partnership, corporation or other type of business venture or non-business organization, national or municipal or state organization or agencies thereof, and which in certain circumstances may be more than one, that is responsible for the payment of all Social Security taxes. For partnerships, the liability shall be joint and several among all partners. For other types of business or non-
business organizations that are not corporations, the liability shall be joint and several as if the organization was a common law partnership. For corporations, if the corporation fails to meet its tax obligations when due, the liability shall be joint and several between the president of the corporation, and all shareholders with greater than a 30% interest in the corporation.

Under this definition all such persons are jointly defined as the employer, for all purposes including the implementation of criminal penalties.

(10) 'Employment, 'covered' or 'covered employment' means any service by an employee for an employer incorporated or doing business within the Federated States of Micronesia employing him, irrespective of where such employment is performed, except family employment.

(11) 'Employment, non-covered' or 'non-covered employment' means any employment engaged in by an employee where coverage is statutorily exempt in the Federated States of Micronesia, family employment, or employment by an employee outside of the Federated States of Micronesia and which is not taxable by the FSM Social Security Administration.

(12) 'Family employment' means employment of a
worker by a member of the household, a parent or a son or daughter except that the worker may apply to the Board for a determination that such employment is bona fide covered employment subject to this subtitle.

(13) 'Insured status' can mean any of the following:

(a) 'Currently insured individual' means any individual who has had not less than 20 quarters of coverage during the 25 quarter period ending with:

(i) the quarter in which he died; or

(ii) the quarter in which he became entitled to old age insurance benefits at age sixty (60);

(iii) the quarter in which he became disabled, whichever occurs first.

(b) For individuals who qualified as a currently insured person prior to December 31, 2006, the number of quarters to qualify as a currently insured person was not less than eight quarters of coverage during the thirteen quarter period ending with:

(i) the quarter in which he died; or

(ii) the quarter in which he became entitled to old age insurance benefits at age sixty (60);

(iii) the quarter in which he became disabled, whichever occurs first.

(c) 'Fully insured individual' means any
individual whose total cumulative quarters of coverage are at least as great as the number of years calculated from the later of the date the worker turned age twenty-one (21), or June 30, 1968, to the date the worker attains age sixty (60), dies or becomes disabled. For this purpose, partial years shall be counted as whole years (for example 37.25 years would be rounded up to 38 years). In no case shall an individual be a fully insured individual unless he has at least 12 quarters of coverage:

(i) For individuals who attain age sixty (60), die or become disabled on or before December 31, 2006, no more than thirty-eight (38) quarters of coverage are required to be fully insured and there is no minimum amount required for employee contributions to the Social Security System.

(ii) For individuals who turn sixty (60) or die after December 31, 2006, no more than fifty (50) quarters of coverage and employee contributions to the Social Security System of at least $2,500 are required to be fully insured. Should an individual’s employee contributions total less than $2,500 as of the date of termination of employment or death, the individual or their surviving spouse may pay the difference to the FSM Social Security Administration in a single sum payment.
in order to become fully insured. The surviving
children will be eligible for benefits so long as the
individual was currently insured at the time of the
individual's death,

(iii) For individuals who become disabled
after December 31, 2006, no more than 45 quarters of
coverage and employee contributions to the Social
Security System of at least $1,500 are required to be
fully insured. Should an individual's employee
contributions total less than $1,500 as of the date of
termination from employment, the individual may pay the
difference to the FSM Social Security Administration in
a single sum payment in order to become fully insured:

(d) 'Fully insured status' means:

(i) For individuals who turn sixty (60) or
die after January 01, 2010, shall have total cumulative
quarters of coverage equaling fifty (50) quarters of
coverage or greater, and employee contributions to the
Social Security System of at least $2,500 are required
to be fully insured. Employee contributions are the
contributions defined in section 901 only. Should an
individual's employee contributions total less than
$2,500 as of the date of qualification as a fully
insured individual, the individual or their surviving
spouse may pay the difference to the FSM Social Security
Administration in a single sum payment in order to be fully insured. If the individual or the surviving spouse is unable to pay the difference on the minimum contribution, the individual or surviving spouse can opt for lump sum payment equal to the total employee contribution.

(ii) 'Fully insured' means for individuals who become disabled on or after January 1, 2010, at least forty-five (45) quarters of coverage are needed to be defined as fully insured, and they must also meet the definition of currently insured at the time of the onset of their disability. Additionally, employee's contributions to the Social Security System of at least $1,500 are required to be fully insured. Should an individual's employee contribution total less than $1,500 as of the date of disability, the individual may pay the difference to the FSM Social Security Administration in a single lump sum payment in order to be fully insured.

(14) 'Quarter' and 'calendar quarter' mean a period of three calendar months ending on March 31st, June 30th, September 30th, or December 31st. 'Quarter of coverage' means a quarter in which the individual has been paid $300 or more in wages in covered employment subject to this subtitle.
(15) 'Wages' means remuneration paid subject to the provisions of this subtitle, including the cash value of all remuneration paid in any medium other than cash and remuneration accruing to a self-employed person. Remuneration accruing to a self-employed person shall be deemed to be twice the amount paid to the highest paid employee reported by the self-employed person in a quarter, with a maximum of $3,000 per quarter through September 30, 2003 and a maximum of $5,000 per quarter beginning October 1, 2003. This maximum quarterly amount shall increase to $6,000 on January 1, 2008, $7,000 on January 1, 2013, $8,000 on January 1, 2018, $9,000 on January 1, 2023, and $10,000 on January 1, 2028. Remuneration accruing to a self-employed person who has no covered employees shall, for each quarter of a year, be deemed to be five (5) percent of the gross revenue of the business or gross revenue of all businesses for the previous calendar year, subject to a $3,000 maximum per quarter through September 30, 2003 and a maximum of $5,000 per quarter beginning October 1, 2003. This maximum quarterly amount shall increase to $6,000 on January 1, 2008, $7,000 on January 1, 2013, $8,000 on January 1, 2018, $9,000 on January 1, 2023, and $10,000 on October 1, 2028. Remuneration paid for any service, which is more or less than a whole dollar
shall, as may be prescribed by regulations, be computed to the nearest dollar. Wages shall not include:

(a) that part of remuneration in excess of $3,000 through September 30, 2003 and in excess of $5,000 beginning October 1, 2003, in excess of $6,000 beginning January 1, 2008, in excess of $7,000 beginning January 1, 2013, in excess of $8,000 beginning January 1, 2018, in excess of $9,000 beginning on January 1, 2023, and in excess of $10,000 beginning on January 1, 2028, paid in a quarterly reporting period by one employer;

(b) any payment on account of sickness or accident disability, or medical or hospitalization expenses made by an employer to or on behalf of an employee;

(c) any payment made to or on behalf of an employee or to the employee's beneficiary from a trust or annuity;

(d) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of an employer;

(e) remuneration paid for casual or intermittent labor not performed in the course of the employer's trade or business when such employment does not exceed
employment in more than one week in each calendar month
of each quarterly reporting period; and
(f) remuneration from family employment subject
to the provisions of this subtitle.

Section 2. Section 605 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Laws Nos. 5-
120 and 14-37 is hereby further amended as follows:

"Section 605. Violations — Penalties and interest —
Attorney’s fees and costs.

(1) Any person who knowingly makes any false statement
or who falsifies any report or record of the Federated
States of Micronesia Social Security System in an
attempt to defraud the system is guilty of a misdemeanor
and upon conviction thereof shall be imprisoned for a
period of not more than one year, or fined not more than
$2,000 or both. Any employer who intentionally fails to
pay the employer’s FSM Social Security taxes in any
given quarter, or any employer who intentionally
withholds FSM Social Security taxes from an employee’s
wages and does not pay FSM Social Security taxes on
behalf of that employee, or any employer who employs an
employee and knowingly fails to withhold FSM Social
Security taxes on that employee is guilty of a
misdemeanor and upon conviction thereof shall be
imprisoned not more than one year, or fined not more
than $2,000 or both. In addition to this criminal penalty, if an employer is determined by his failure to have paid either the employer's or employee's contributions to the FSM Social Security Administration, and the employee is denied benefits by the FSM Social Security Administration because of a lack of quarters of coverage, and the contributions withheld would have caused the employee to be fully or currently insured and eligible for benefits, the employer shall be responsible directly for the payment of all benefits that would accrue to the employee or his beneficiaries under this act. If the employer, after the initial denial, subsequently makes back payments, the FSM Social Security Administration can seek repayment from the employer of all benefits paid to the employee as a penalty for the failure to pay.

(2) Any employer who willfully fails to report wages paid or pay contributions required thereon is guilty of a misdemeanor and, in addition to any other penalty prescribed by law, such an employer shall also pay penalties not in excess of 100 percent of the tax due plus interest to the Board as it by regulation shall require.

(3) Any person who receives benefits to which he or she is not entitled shall be liable to repay the Social
Security Administration those benefits, and in addition
to the remedies under section 808 of this subtitle, may
be subject to civil action for recovery of those
benefits.

(4) Any covered employer who fails to submit the
quarterly report and pay the social security tax within
ten days after the end of the quarter shall be
considered delinquent. The Board or its authorized
representatives shall be vested with the authority to
levy a penalty of not more than $1,000 per quarter on
delinquent employers.

(5) If any tax or penalty imposed by this subtitle is
not paid on or before the date prescribed for such
payment, the Board or its authorized representatives
shall be vested with the authority to collect, in
addition to such tax and penalty, interest on the unpaid
balance of the tax principal at the rate of 12 percent
per annum from its due date until the date it is paid.

(6) In the event that any claim for monies is due to
the Social Security Administration under this subtitle
is referred to an attorney or trial counselor for
collection, whether or not suit is brought for the
collection thereof, the individual or entity shall
additionally be liable for reasonable attorney or trial
counselor fees and costs of collection, including court
costs incurred by the Social Security Administration in
its discretion may waive part or all of any attorney
fees and costs awardable under this section.

(7) In the event of a violation of subsections (1),
(2), (4), (5) or (6), the payments or penalties defined
apply to the employer, as defined in section 603(9), and
the payments or penalties, including criminal penalties,
defined in these subsections can be enforced on the
persons defined in section 603(9). In addition, for
municipal organizations, states of the Federated States
of Micronesia or national government or any agencies of
any of the above, the Director of Finance, or its
equivalent position of such organization is responsible
for payments as described herein, and the payments or
penalties, including criminal penalties, defined in
these subsections can be enforced against such chief
financial officer."

Section 3. Section 607 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Laws Nos. 5-
120 and 14-34, is hereby further amended to read as follows:

"Section 607. Lien for taxes.

(1) All taxes, including penalties and interest
accrued thereon, imposed or authorized under this
subtitle shall be a lien upon any property of the
employer, having priority over all other claims and
liens including liens for other taxes, except as
provided in the Secured Transaction Act and may be
collected by levy upon such property in the same manner
as the levy of an execution.

(2) All taxes, including penalties and interest
accrued thereon, imposed or authorized under this
subtitle owed by a state or municipal government or
national government or any agency thereof, shall be
subject to a writ of garnishment of all moneys owed by
the FSM National Government to any state or municipal
government or any agency thereof, and such writ of
garnishment shall have priority over any claim for such
moneys in any manner by the particular state or
municipal government or agency thereof and such writs of
garnishment are specifically exempt from any
prohibitions under Section 707 of title 6 of the Code of
the Federated States of Micronesia."

Section 4. Section 801 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Laws Nos. 5-
120, 12-76 and 14-37, is hereby further amended to read as
follows:

"Section 801. Scope of Coverage; Verification of
Employment; Old age benefits.

(1) All employees, wherever employed by an employer
incorporated or doing business in the Federated States
of Micronesia, shall be covered unless both the employer 
and the employee are currently subject to any other 
recognized Social Security System. The administrator of 
the Social Security System, or his designees, shall 
cause at least two unannounced employment site checks to 
be conducted upon every non-government employee actually 
engaged in an employer-employee relationship that will 
allow him to be covered and eligible for benefits under 
this subtitle. The two employment site checks shall be 
conducted within a month of each other and both shall be 
conducted within the first six months of the employee's 
first contribution payment to the Social Security 
System. For the purposes of this subtitle, any elected 
official in any Government unit or body in the Federated 
States of Micronesia is deemed to be an employee 
employed by a Federated States of Micronesia employer. 
The governmental unit or body to which such person is 
elected is subject to the provisions in this subtitle 
relating to the duty and obligations of the Federated 
States of Micronesia employer.

(2) Every person who:

(a) is fully insured 
(b) has attained age 60; and 
(c) has filed a complete application with the 
Social Security Administrator for old age insurance
shall be entitled to an old age insurance benefit
subject to the earnings test as defined and applied in
this subtitle.

(3) Old age insurance benefit payments shall be
paid for each month commencing with the month in which
both paragraphs (2)(a) and (2)(b) of this section are
satisfied and shall end with the month preceding the
month in which the applicant dies.

(4) Notwithstanding the provisions of subsections (2)
and (3) above, retroactive payment shall be limited to
the twelve (12) months immediately preceding the month
in which the individual entitled to benefits has
submitted an application.

(5) In an application for benefits under this section,
whether individually or as a dependent, the applicant
has the burden to come forward with evidence and to take
all steps necessary to file a completed application.
The Social Security Administration has the right to deny
an application for benefits solely on the basis of non-
compliance with the application process or the failure
of the applicant to produce reasonably available
documents or information."

Section 5. Section 803 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Laws Nos. 9-
056 and 12-76, is hereby further amended to read as follows:
"Section 803. Dependent's benefits

(1) Every surviving child who:

(a) was dependent upon an individual who died fully insured or currently insured; and

(b) has filed a complete application with the Social Security Administrator for survivor's insurance;

shall be entitled to a surviving child's insurance benefit, subject to the earnings test as defined in this subtitle.

(2) A surviving child's insurance benefit shall be paid for each month beginning with the month of the death of the individual who died fully insured or currently insured and shall end with the month preceding the month which contains the first to occur of the following events:

(a) attainment of age twenty two (22) in the case of a surviving child who is a bona fide student; or

(b) ceasing to be disabled after attainment of age eighteen (18) in the case of any surviving child who was disabled before the attainment of age twenty-two (22); or

(c) attainment of age eighteen (18) in the case of any surviving child not described in preceding paragraphs (a) and (b), except that benefits shall be payable during the disability of a surviving child who
was disabled before the attainment of age twenty-two
(22) regardless of the child's age; or
(d) marriage; or
(e) adoption.
(3) A surviving child shall be deemed to have been
dependent upon his parent or adopting parent unless that
parent or adopting parent was not living in the same
household with or contributing to the support of such
child prior to his death. The child's insurance benefit
shall be paid to the individual upon whom the child is
currently dependent, except such benefit shall be
subject to the earnings test as defined in this
subtitle.
(4) Notwithstanding the provisions of subsections (1)
and (2) above, retroactive payments shall be limited to
the twelve (12) months immediately preceding the month
in which the surviving child or the surviving child's
guardian has submitted an application."

Section 6. Section 803A of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Law No. 12-
76, is hereby further amended to read as follows:
"Section 803A. Disability benefits.
(1) Every person who:
(a) is both currently and fully insured;
(b) is disabled and has been disabled for at
least three full calendar months; and

(c) has filed a complete application with the
Social Security Administrator for disability insurance
shall be entitled to a disability insurance benefit,
subject to the earnings test as defined in this
subtitle.

(2) Disability insurance benefits shall be paid for
each month, beginning with the month of the waiting
period and ending with the month preceding the month in
which the disabled individual dies or recovers from
disability.

(3) Notwithstanding the provisions of subsections (1)
and (2) above, retroactive payments shall not be made
for more than the twenty-four (24) months immediately
preceding the month in which the disabled individual has
submitted an application.

(4) For persons disabled on or before January 01,
2010, that person to be eligible must only be fully
insured to qualify for disability benefits, if they
comply with the rest of this section.”

Section 7. Section 804 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Law Nos. 5-
120, 7-118, 9-56, 14-37 and 14-86 is hereby amended to read as
follows:

"Section 804. Amount of retirement and disability
insurance benefits.

(1) An insured eligible individual shall be paid a monthly old age benefit for life, except for any month of disqualification as provided by this subtitle, in an amount calculated upon an annual basis as follows:

(a) For benefit payments that begin prior to January 1, 2007; 16.5 percent of the first $10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of $10,000 but not in excess of the next $30,000, plus two percent of cumulative covered earnings in excess of $40,000.

(b) For benefit payments that begin on or after January 1, 2007 but before January 01, 2010; 16.5 percent of the first $10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of $10,000 but not in excess of the next $30,000, plus two percent of cumulative covered earnings in excess of $40,000 but not in excess of the next $262,500, plus one percent of cumulative covered earnings in excess of $302,500.

(c) For benefit payments that begin on or after January 1, 2010:

(i) For individuals who are 65 and over; 16.5% of the first $10,000 of cumulative covered earnings, plus 3 percent of cumulative covered earnings
in excess of $10,000 but not in excess of the next
$30,000.00, plus 2% of the cumulative covered earnings
in excess of $40,000 but not in excess of the next
$262,500, plus one percent of cumulative covered
earnings in excess of $302,500.

(ii) For individuals who turn 60 after
January 1, 2010, such individual from ages 60 to 64 will
receive fifty percent (50%) of the total of all the
described benefits in this subsection, 16.5% of the
first $10,000 of cumulative covered earnings, plus 3
percent of cumulative covered earnings in excess of
$10,000 but not in excess of the next $30,000, plus 2%
of the cumulative covered earnings in excess of $40,000
but not in excess of the next $262,500, plus one percent
of cumulative covered earnings in excess of $302,500.
These payments in this subsection only, shall be made
without reduction pursuant to the earnings test in
section 603(7).

(iii) For individuals under age 60, benefit
payments would be calculated the same as subsection (i).

(d) Earnings for covered employment after
commencement of payments for retirement or disability
insurance benefits shall be included in benefit
calculations upon subsequent application for benefits,
but such earnings shall be applicable for benefits for
months after the calendar year in which such earnings occurred. For the purpose of this section cumulative covered earnings includes earnings on which contributions have been paid by the individual to the Trust Territory Social Security System.

(e) In the event, benefits have been received under section 804(1)(c)(ii), such benefits shall be automatically adjusted when the individual reaches age 65.

(f) For purposes of interpreting this section "benefit payments begin on" is defined to mean the date, whether retroactive or current when a benefit payment is paid for a specific month. A benefit payment may begin prior to the application date, subject to retroactive payment limitations defined in this act.

(2) An insured, eligible individual shall be paid a minimum monthly benefit of seventy five dollars if the benefit amount calculated in accordance with subsection (1) of this section is less than seventy five dollars monthly. Effective on January 1, 2012, the minimum monthly benefit shall be $100. The minimum monthly benefit is calculated per insured worker, not per recipient.

(3) An individual who is currently and fully insured and who has been under a disability for three full
calendar months and the onset of disability occurred on
or after January 01, 2010, or an individual who was
fully insured and the onset of disability occurred prior
to this bill becoming law shall be paid a monthly
benefit for life or until recovery from the disability,
except for any month of disqualification as provided by
this subtitle in an amount calculated in accordance with
the preceding subsections of this section, and for an
individual with an onset of disability on or after
January 1, 2010, he or she will receive benefits as if
he or she retired at age 65, but with existing quarters
of coverage. Further, the amount of the benefit as so
determined shall, if the individual is receiving a
periodic workmen’s compensation benefit, be reduced each
month by the excess of the sum of the workmen’s
compensation benefit for that month, and the benefit
payable under this act over eighty percent of one-
twelfth of the highest annual covered wages in the
period consisting of the year in which the disability
occurred and the preceding five years. If a workmen’s
compensation benefit was payable in periodic benefits
but was commuted to a lump sum, for purposes of this
subsection it will be considered that the periodic
benefit originally available was paid in each month that
it would have been paid if the commutation had not
Section 8. Section 806 of title 53 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-112, 7-119 and 14-37, is hereby further amended to read as follows:

"Section 806. Amount of survivor insurance benefits.

(1) The surviving spouse of a fully insured worker eligible in accordance with section 802 of this chapter shall be paid a monthly benefit or disability in an amount equal to 60 percent of the retirement or disability insurance benefit calculated for the deceased spouse at the date of death. For a fully insured worker who dies after January 1, 2010, the benefit will be calculated as if he or she retired at age 65, but with existing quarters of coverage.

(2) Each eligible child of an insured worker shall be entitled to a monthly benefit of 15 percent of the retirement insurance benefit calculated for the deceased parent at the date of death. For a fully insured worker who dies after January 1, 2010, the benefit will be calculated as if he or she retired at age 65, but with existing quarters of coverage.

(3) If the spouse of the deceased insured worker is eligible for retirement or disability benefits based on his or her own employment coverage, and is also eligible
for survivors' benefits, the spouse shall receive
whatever benefit pays the highest monthly benefit. In
addition, the surviving spouse shall be entitled to
receive a lump sum equal to four percent of the
cumulative covered earnings upon which the lower benefit
is based, less the sum of all benefits already received
on the basis of those cumulative covered earnings. If
the spouse elects to accept the lump sum payment, he or
she shall lose credit for all quarters of coverage
earned up to the date of application. If that individual
returns to work, he or she shall start over again to
earn quarters of coverage leading to being currently or
fully insured.

(4) The monthly benefit paid to the surviving
child(ren) shall be based on the higher of the two
benefits that have been earned by the deceased parents
if fully or currently insured. In addition the
surviving child(ren) shall be entitled to receive a lump
sum equal to two percent of the other deceased's
parent's cumulative covered earnings, less the sum of
all benefits, if any, received by the deceased parent.

(5) The total survivors' benefit paid to the spouse
and children may not exceed the retirement benefit
calculated for the decedent as of the date of death
except that if the surviving spouse receives benefits
based on his or her own employment coverage, that amount
plus the survivors' benefits for the children may exceed
the amount of the deceased's retirement benefit. In no
event shall the amount paid be less than the minimum
established by the Social Security Administration, as
set out in section 804 of title 53 of the Code of the
Federated States of Micronesia."

Section 9. Section 809 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Laws Nos. 14-
37 and 14-86 is hereby further amended to read as follows:

"Section 809. Payment of benefits to foreign citizens
outside Federated States of Micronesia.

Unless modified by a totalization or other international
agreement, benefit payments under this act shall be paid
to a beneficiary who is not a citizen or a national of
the Federated States of Micronesia and does not reside
in the Federated States of Micronesia, as follows:

(a) Payments shall be made to citizens and
nationals of the Republic of Palau, the Republic of the
Marshall Islands, and the United States as if they were
citizens or nationals of the Federated States of
Micronesia as long as the Social Security Administration
of those nations gives citizens and nationals of the
Federated States of Micronesia reciprocal treatment.

(b) For applications filed after this bill
becomes law, payments shall be made to citizens and
nationals of other nations if they are fully insured at
the time of application, in a lump sum equal to the
total amount contributed to the Social Security
Administration by the employee under section 901 of this
act, while employed in the Federated States of
Micronesia as of the date the employee turns age 60, or
dies prior to age 60. All payments due under this
section shall be payable over six months, from the date
of death, or the date of turning age 60, and/or the date
of filing an application for such benefits, whichever is
later subject to the residency provision in paragraph
(d) less any monthly or periodic payments received.

(c) For applications filed prior to the date of
this bill becomes law, payments shall be made to
citizens and nationals of other nations in a lump sum
equal to the total amount contributed to the Social
Security Administration by the employee while employed
in the Federated Stated of Micronesia as of the date the
employee ceases to be a resident of the Federated States
of Micronesia in accordance with paragraph (d) of this
section.

(d) For purpose of this section, an individual
resides in the Federated States of Micronesia if they
are present in the territory of the Federated States of
Micronesia for 180 days out of the last 365 days and
have ties to the Federated States of Micronesia that
indicate residence such as a home, vehicle, bank account
or personal property.

(e) In determining the benefits and entitlements
under this title for an individual who receives a lump
sum payment in accordance with paragraphs (b), (c) or
(d) of this section and who subsequently returns to the
Federated States of Micronesia to undertake further
covered employment, no covered quarters, employee
contributions or employer contributions accrued by the
individual prior to receiving a lump sum payment shall
be counted."

Section 10. Section 901 of title 53 of the Code of the
Federated States of Micronesia, as amended by Public Law No. 14-
37, is hereby further amended to read as follows:

"Section 901. Employee contributions.

(1) There is hereby imposed on every employee a tax
equal to the following percentages of wages received by
him with respect to employment subject to this subtitle:

(a) with respect to wages paid from the effective
date of this act through June 30, 1985, the rate shall
be two percent;

(b) with respect to wages paid from July 1, 1985,
through June 30, 1990, the rate shall be three percent;
(c) with respect to wages paid from July 1, 1990, through June 30, 1995, the rate shall be four percent;
(d) with respect to wages paid from July 1, 1995, through June 30, 2000, the rate shall be five percent;
(e) with respect to wages paid from July 1, 2000, to October 01, 2009, the rate shall be six percent.
(f) with respect to wages paid on and after October 01, 2009, to January 1, 2013, the rate shall be seven percent.
(g) with respect to wages paid on and after January 1, 2013, the rate shall be seven point five (7.5) percent.”

Section 11. Section 902 of title 53 of the Code of the Federated States of Micronesia, as amended, is hereby further amended to read as follows:

“Section 902. Employer contributions.
There is hereby imposed on every employer an excise tax, with respect to having an individual in his employ, equal to the following percentages of wages, paid by him with respect to employment subject to this subtitle:
(1) with respect to wages paid from the effective date of this act through June 30, 1985, the rate shall be two percent;
(2) with respect to wages paid from July 1, 1985, through June 30, 1990,
the rate shall be three percent;

(3) with respect to wages paid from July 1, 1990, through June 30, 1995, the rate shall be four percent;

(4) with respect to wages paid from July 1, 1995, through June 30, 2000, the rate shall be five percent;

(5) with respect to wages paid after June 30, 2000, the rate shall be six percent.

(6) with respect to wages paid on and after October 01, 2009, the rate shall be seven percent.

(7) with respect to wages paid on and after January 1, 2013, the rate shall be seven point five (7.5) percent."

Section 12. Section 1006 of title 53 of the Code of the Federated States of Micronesia, as amended, is hereby further amended to read as follows:

"Section 1006. Authorized investments.

Investments may be made in:

(1) Government obligations. Obligations issued or guaranteed as to principal and interest by the National Government and/or the State governments of the Federated States of Micronesia or by the government of the United States, provided that the principal and interest on each obligation are payable in the currency of the United States.

(2) Corporate obligations and mortgage backed securities. Obligations of any public or private entity
or corporation created or existing under the laws of the Federated States of Micronesia or of the United States or any state, territory or commonwealth thereof, or obligations of any other government or economic community which are payable in United State dollars, or pass through and other mortgage backed securities, provided that:

(a) The obligation is of an agency of the United States Government, or

(b) The obligation is of an agency of the Federated States of Micronesia Government, or

(c) The obligation is investment grade rated by one of two nationally recognized rating agencies; and

(d) No investment under this heading exceeds ten percent of the market value of the Fund or ten percent of the outstanding value of the issue at the time of purchase.

(e) Preferred and common stocks of any corporation created or existing under the laws of the Federated States of Micronesia or under the laws of the United States or any state, territory or commonwealth thereof, or any other nation, may be purchased provided that:

(i) The purchase of such shares shall be considered reasonable and prudent by the investment
advisor at the time of purchase;

(ii) No more than five percent of the market
value of the Fund shall be invested in the stock of any
one corporation; and

(iii) Not more than twenty-five percent of the
market value of the Fund shall be invested in any one
industry group.

(iv) Such shares are readily marketable and
actively traded on a recognized national or regional
stock exchange, physical or electronic.

(3) Insurance company obligations. Contracts and
agreements supplemental thereto providing for
participation in one or more accounts of a life
insurance company authorized to do business in the
Federated States of Micronesia or in any state,
territory or commonwealth of the United States, provided
that the total market value of these investments at no
time shall exceed ten percent of the total market value
of all investments of the Fund.
Section 13. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

________________________, 2009

Law .went signature
03-06-09

Manny Mori
President
Federated States of Micronesia